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IN THE

Supreme Court of the United States

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.,

Petitioner,

v.

ELLA WILLIAMS,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

I. THE COURT SHOULD DEAL WITH THIS CASE AS IT CAME HERE AND SET ASIDE THE SIXTH CIRCUIT JUDGMENT.

The Sixth Circuit below found respondent Williams substantially limited in the major life activity of performing manual tasks, and therefore disabled under the Americans with Disabilities Act ("ADA"). The basis for the court's holding was its conclusion that Williams was unable to perform certain manual tasks associated with an assembly-line job in petitioner TMMK's automotive assembly plant. In reaching this result, the court ignored well-established standards governing the determination of disability under the major life activities of both working

and performing manual tasks. Instead, the court created a new, hybrid standard, under which a plaintiff can prove disability by showing "that her manual disability involves a 'class' of manual activities affecting the ability to perform tasks at work." Pet. App. 4a. The effect of the court's ruling is to permit a plaintiff who is neither substantially limited in working nor in performing manual tasks to be found disabled simply on a showing that she is limited in her ability to perform elements of a single job. The petition thus presented the question whether the Sixth Circuit correctly held "that an impairment precluding an individual from performing only a limited number of tasks associated with a specific job qualifies as a disability under the [ADA]." Pet. i.

We restate the holding below and the question presented because neither respondent nor her amici show any interest in defending the former or addressing the latter. Instead, Williams argues that we have "misstated" the holding below. Resp. Br. 15. This is a reprise of the approach she took in opposition to certiorari. *See* Opp. 12 ("Toyota misstates the holding of the Sixth Circuit when Toyota contends the Sixth Circuit found ADA disability based solely upon an impairment from performing only a limited number of tasks associated with a specific job."); *id.* 13 ("Toyota's Petition misstates the Sixth Circuit holding").

We fully responded to this contention at the jurisdictional stage. *See* Pet. Reply 1-3. As we observed then, the Sixth Circuit's decision could not be clearer on this point. The court plainly held that "in order to be disabled the plaintiff must show that her manual disability involves a 'class' of manual activities affecting the ability to perform tasks *at work*." Pet. App. 4a (emphasis added). Thus, the court thought it enough that respondent's impairments did no more than substantially limit "her ability to perform the

range of manual tasks associated with an assembly line job." *Id.*; *see id.* 5a (respondent is disabled if substantially limited in "her ability to perform the manual tasks that are job-related"); *id.* 2a ("key issue" focuses on "plaintiff's physical difficulties in using her hands, arms and shoulders, *as required by her new job*") (emphasis added). We also pointed out that our reading of the Sixth Circuit decision was precisely the way Judge Boggs described it in dissent, *id.* 9a-11a—with nary an objection from the majority that he was misconstruing their words. *See* Pet. Reply 2-3.

Since this Court's grant of certiorari, others have agreed with our reading. The Ninth Circuit recently cited the decision at issue here and noted that "[t]he Sixth Circuit has suggested that the manual-tasks inquiry be further subdivided into separate sub-classes of manual tasks. We doubt that this is the correct approach * * *." *Thornton* v. *McClatchy Newspapers, Inc.*, 261 F.3d 789, 2001 WL 914019, at *6 n.4 (9th Cir. Aug. 15, 2001). The Solicitor General in his brief similarly reads the Sixth Circuit to have "held that respondent could show a substantial limitation on the activity of 'performing manual tasks,' based solely on her inability to perform *work-related* manual tasks." U.S. Br. 9 (emphasis in original). Perhaps most importantly, the Sixth Circuit itself in subsequent decisions has reaffirmed the rule articulated by the panel below as we have understood it. *See Kiphart* v. *Saturn Corp.*, 251 F.3d 573, 584 (6th Cir. 2001) (reviewing in detail the Sixth Circuit's holding in this case and concluding that the plaintiff presented sufficient evidence of disability simply because his "impairments substantially limited his ability to perform an entire class of manual activities associated with assembly-line and product-handling jobs"); *Henderson* v. *Ardco, Inc.*, 247 F.3d 645, 652 (6th Cir. 2001) ("the court's judgment that Ms. Wil-

liams was physically disabled relied on how her impairments 'seriously reduced her ability to perform the manual tasks that are job-related.' This appears to combine assessment of Williams's impairment in manual tasks and her impairment in working * * *.") (brackets omitted).

To support her contrary reading, respondent and her amici rely exclusively on one passage in which the panel majority stated that respondent's impairments "are sufficiently severe to be like deformed limbs and such activities affect manual tasks associated with working, *as well as manual tasks associated with recreation, household chores and living generally*." Pet. App. 6a (emphasis added). *See, e.g.*, Resp. Br. 13; AFL-CIO Br. 2, 4. As the Solicitor General has explained, the italicized language "appears disconnected from the Sixth Circuit's legal analysis." U.S. Br. 15 n.6. We addressed this passage in our opening brief, explaining that the fact that a limitation might "affect" particular areas of Williams's life is far from saying that she is *substantially limited* in performing manual tasks in those areas, as the terms of the ADA require. *See* Pet. Br. 17-18 & n.5 (quoting cases). In the face of that explanation, Williams still contends only that her impairment "affect[s]" activities outside of work. Resp. Br. 9, 20.

The end result is that neither Williams nor her amici defend the holding below, nor do they address the question presented. They resort instead to something resembling appeals to equity. Williams generally argues that she is disabled, asserting in the first sentence of her argument that the court below properly found her disabled "even if the language of the opinion is incorrect." Resp. Br. 22. And her amici brief the case as if the question presented were something along the lines of "How should courts apply summary judgment in ADA cases?" *See, e.g.*,

NELA Br. 6-21; NCD Br. 26-29; ATLA Br. 7-13. Indeed, amicus Association of Trial Lawyers of America boldly asserts that the "primary issue" and "central question" before the Court is "whether the district court * * * improperly took this question [of Ms. Williams's disability] away from the jury," ATLA Br. 3, 7-8, even though the case—submitted on cross-motions for summary judgment—turns on the legal standard for disability, and the parties have no genuine disputes about the facts.[1]

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[1] Williams argues that the Sixth Circuit not only reversed the grant of summary judgment in favor of Toyota, but also held as a matter of law that she was disabled. *See* Resp. Br. 18. We disagree—and so do her amici. *See* ATLA Br. 8; NELA Br. 5; Bazelon Br. 7. As Williams's amici explain, the opinion below notes no fewer than three times that its analysis is based on the record viewed in the light most favorable to the plaintiff—the correct standard in considering the propriety of summary judgment for the defendant, but not in considering whether the plaintiff is entitled to summary judgment. *See* Pet. App. 2a, 4a (twice). The panel majority concluded that the evidence, so viewed, is sufficient "to allow the factfinder to find" that Williams is disabled. *Id.* 4a; *see also id.* 5a (concluding that there was "sufficient evidence to support a finding").

Williams's reading, however, derives some force from the etymology of the majority opinion. The opinion was amended following Williams's petition for rehearing seeking clarification on whether the issues the court did not address—whether Williams was substantially limited in "lifting" or "working," or whether she had a "record" of disability or was "regarded as" disabled—were open on remand. The amended opinion arguably foreclosed the need to examine those issues by declaring Williams disabled and remanding only for a trial on "reasonable accommodation." *See* Resp. Br. 18. But there is no need to resolve the internal inconsistencies in the majority opinion on this question. Whether the Sixth Circuit ruled that Williams was disabled as a matter of law or that a factfinder could so find, it did so pursuant to an erroneous legal standard, and accordingly the judgment for Williams cannot stand.

This Court has made clear, however, that it "disapprove[s] the practice of smuggling additional questions into a case after [it] grant[s] certiorari." *Irvine* v. *California*, 347 U.S. 128, 129 (1954) (Jackson, J.). Rather than accept the invitation to range freely beyond the question presented, the Court should adhere to its customary practice and "deal with the case as it came here and affirm or reverse based on the ground relied on below." *Peralta* v. *Heights Med. Ctr., Inc.*, 485 U.S. 80, 86 (1988). *See Bragdon* v. *Abbott*, 524 U.S. 624, 638 (1998) ("It is our practice to decide cases on the grounds raised and considered in the Court of Appeals and included in the question on which we granted certiorari."); S. Ct. Rule 14.1(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court."). Doing so here should result in overturning the judgment below, because there is no longer any serious dispute that the sole ground relied upon by the Court of Appeals to enter that judgment—that Williams could show substantial impairment in the manual tasks associated with her job—was wrong.

As discussed at length in TMMK's opening brief, the Sixth Circuit decision was founded on a legal error. Instead of examining whether Williams's impairment substantially limited the major life activity of performing manual tasks generally, the court of appeals considered *only* Williams's inability to perform the manual tasks associated with her specific assembly-line job. It was, however, neither sufficient nor necessary for Williams to show a substantial limitation in performing the specialized manual tasks required at work; the proper inquiry is whether she could show a substantial limitation in the *overall* major life activity of performing manual tasks. *See* U.S. Br. 21 n.10.

In this respect, assessing whether someone is substantially limited in the major life activity of performing manual tasks presents difficulties typically not present with such major life activities as seeing, hearing, or speaking. "Performing manual tasks" covers an infinite range of activities; all of us will be more adept at some than at others, and many of us may be substantially limited in specific tasks without being more generally impaired. But just as an individual who could not hear one particular tone, or discern one particular shade, or enunciate one particular consonant, would not be considered substantially limited in the major life activities of hearing, or seeing, or speaking, so too the inability to perform one particular manual task, without more, does not constitute a substantial limitation on the major life activity of performing manual tasks. The limitation must be sufficiently broad, or concern a task sufficiently central to life, to constitute a substantial limitation on the major life activity of performing manual tasks. That is, after all, what the text of the statute requires—an "impairment that substantially limits one or more of the major life activities." 42 U.S.C. § 12102(2)(A).[2] And as we explained in our opening brief, federal courts—except the Sixth Circuit—have accordingly evaluated claims of disability with respect to manual tasks against a wide range of daily manual activities. *See* Pet. Br. 13-14 (quoting cases).

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[2] Amici the Bazelon Center, *et al.*, pose the crucial question and then dramatically fail to answer it. *See* Bazelon Br. 15 ("[A]t what point does an individual's substantial impairment in the performance of a few manual tasks rise to the level of impairing the general category of 'performing manual tasks' as compared to the average person in the general population? The answer is that one who is able to perform manual tasks only at a level substantially below the level at which an average person can perform such tasks is disabled under the ADA.").

Respondent offers no persuasive argument against overturning the judgment below. She invokes the general maxim that remedial statutes should be liberally construed to effectuate their purpose, *see* Resp. Br. 30-34, but such platitudes cannot trump "the fundamental statutory requirement" of the ADA "that only impairments causing 'substantial limitations' in individuals' ability to perform major life activities constitute disabilities." *Albertson's, Inc.* v. *Kirkingburg*, 527 U.S. 555, 565 (1999). *See* 42 U.S.C. § 12102(2)(A). A broad but counter-textual interpretation of a statute is rendered no more faithful to congressional intent simply because the statute embodies a remedial purpose:

> [N]o legislation pursues its purposes at all costs. Deciding what competing value will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law. [*Pension Benefit Guar. Corp.* v. *LTV Corp.*, 496 U.S. 633, 646-647 (1990) (quoting *Rodriguez* v. *United States*, 480 U.S. 522, 525-526 (1987)) (emphasis in original).]

Congress quite intentionally distinguished between individuals afflicted with truly disabling[3] impairments and

[3] Contrary to the suggestion of amicus National Council on Disability, we have not used the phrase "truly disabled" as a term of art intended to hearken back to "an era where the 'disability' label excused people from societal obligations." NCD Br. 14. We use that term, as many others have, simply to refer to the "discrete and insular minority" properly encompassed by the ADA's definition of disability, 42 U.S.C. § 12101(a)(7)—those whose impairments *substantially* limit them in one or more major life activities. *See Francis* v. *City of Meridien*, 129 F.3d 281, 286 (2d Cir. 1997) (ADA ensures that "truly disabled, but genuinely capable, individuals will not face discrimination in employment because of stereotypes about the insurmountability of their handicaps") (citation omitted).

those hampered by impairments that do not substantially limit major life functions, and it is thus no answer to say that the remedial nature of the ADA should dictate that anyone with a physical impairment necessarily comes within the statute's sweep. That is particularly true given that expanding the statute's reach beyond the "discrete and insular minority" contemplated by Congress, 42 U.S.C. § 12101(a)(7), would disserve the remedial purpose of the Act by reducing available opportunities for reasonable accommodation of those Congress intended to protect. *See* Pet. Br. 29-33.

Nor does respondent get anywhere with the unremarkable proposition that the ADA must be considered as a whole. Resp. Br. 26-30. From this premise, respondent and some of her amici argue that adopting a definition of disability more restrictive than the Sixth Circuit's standard would give rise to an intractable paradox whereby only those too impaired to work at all would be considered disabled. That would effectively disqualify them from coverage under the Act, since the ADA extends protection only to "qualified individual[s] with a disability"—defined as those who "can perform the essential functions" of their job. 42 U.S.C. § 12111(8). Respondent's Catch-22 scenario is wrong.

To require, as a condition of demonstrating disability under the major life activity of performing manual tasks, that a plaintiff be significantly restricted in a range of basic or everyday manual functions is no different than requiring individuals to be significantly restricted in hearing or seeing to qualify as substantially limited in those major life

activities. Yet such a standard in the hearing and seeing contexts has obviously not spawned the paradox respondent fears, because the ADA defines a "qualified individual with a disability" as someone who can perform the essential functions of the job "*with* or without *reasonable accommodation*." 42 U.S.C. § 12111(8) (emphases added).

To be clear: it should come as no surprise that an individual who meets the Act's definition of disabled because she is substantially limited in the major life activity of performing manual tasks would have difficulty with jobs that involve such tasks, just as an individual substantially limited in the major life activities of seeing, hearing, or walking would have difficulty with jobs involving those activities. The issue is whether the individual can nonetheless perform the job with a reasonable accommodation—an indicator light for the deaf medical technician, for example, *see* S. Rep. No. 101-116, at 10 (1989)—not whether the threshold definition of disability should be lowered to include cases in which the impairment does not inhibit performing the job at all.[4]

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[4] The contention of amicus National Employment Lawyers Association that the lower courts are being "overly restrictive" in applying the ADA—NELA brands no fewer than 28 published opinions "absurd[]," NELA Br. 14, 18—is based on a startling misreading of this Court's decision in *School Board of Nassau County* v. *Arline*, 480 U.S. 273 (1987). The Court in that case did not find, as NELA contends, that the plaintiff's hospitalization for tuberculosis "*22 years prior to the adverse employment action*" established that she was substantially limited in a major life activity at the time of the lawsuit. NELA Br. 18 (emphasis in original). The Court was construing the "record of * * * impairment" prong of the Rehabilitation Act's definition of "handicapped individual," and noted that the plaintiff's hospitalization "suffices to establish that she has a 'record of * * * impairment' " under the Act. 480 U.S. at 281. That would of course be true regardless of the date of hospitalization.

II. WILLIAMS DID NOT ESTABLISH A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER SHE WAS SUBSTANTIALLY LIMITED IN HER ABILITY TO PERFORM MANUAL TASKS.

The Sixth Circuit analyzed the case under the major life activity of performing manual tasks because that was Williams's "primar[y]" assertion. Pet. App. 4a. The court did not address Williams's claim that she was also substantially limited in the asserted major life activities of lifting and working, noting that "her counsel conceded during oral argument that Williams' strongest claim pertained to the major life activity of performing manual tasks." *Id.* 4a n.1.[5] The court also did not address Williams's contention that she had a "record" of a qualifying impairment or was "regarded as" disabled. *See* Pet. App. 6a; 42 U.S.C. § 12102(2)(B), (C). To the extent these

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[5] That concession appears wise. Even if "lifting" is considered a "major life activity," Williams's restriction against lifting more than 20 pounds or more than 10 pounds frequently does not demonstrate substantial impairment. *See, e.g.*, *Marinelli* v. *City of Erie*, 216 F.3d 354, 364 (3d Cir. 2000) ("As [plaintiff's] ten-pound limitation is not far removed from the twenty-five pound restrictions our sister circuits have held not to render one disabled under the ADA, we would also hold that [plaintiff's] lifting restriction does not render him sufficiently different from the general population such that he is substantially limited in his ability to lift."). As for the major life activity of working, one reason the Sixth Circuit's approach to the issue of manual-task impairments is so problematic is that it circumvents this Court's ruling in *Sutton* v. *United Air Lines, Inc.*, 527 U.S. 471, 492 (1999), that a plaintiff cannot be viewed as substantially limited in the major life activity of working simply because of an impairment that precludes her from one type of job, a specialized job, or a particular job of choice. *See* Pet. Br. 19-21. Williams utterly failed to adduce evidence of substantial limitation in working with the specificity required by *Sutton* and the applicable federal regulation. 29 C.F.R. § 1630.2(j)(3)(i). *See* Pet. App. 37a-42a.

issues are open, they should be considered on remand and should not be addressed for the first time here. *See NCAA* v. *Smith*, 525 U.S. 459, 470 (1999) ("we do not decide in the first instance issues not decided below"); *Matsushita Elec. Indus. Co.* v. *Epstein*, 516 U.S. 367, 379 n.5 (1996) ("While it is true that a respondent may defend a judgment on alternative grounds, [this Court] generally does not address arguments that were not the basis for the decision below.").[6]

The Court may also leave for remand the question whether Williams could establish that she is substantially limited in the major life activity of performing manual tasks under a proper legal analysis. *See, e.g., Adarand Constructors, Inc.* v. *Peña*, 515 U.S. 200, 237-239 (1995). It also seems appropriate, however, for the Court itself to answer that question. The parties have joined issue on the question, the record is fully developed, and the proper disposition is clear. *See New York City Transit Auth.* v. *Beazer*, 440 U.S. 568, 583 n.24 (1979) ("We conclude that it is appropriate to reach the issue in this case, rather than remand it to the Court of Appeals, because it was fully aired before the District Court, it involves the application of settled legal principles to uncontroversial facts, and it has been carefully briefed in this Court without any of the

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[6] Issues that are *not* open on remand include those surrounding Williams's allegations that TMMK violated the ADA by discontinuing her employment when she refused to return to work. *See* Pet. App. 34a (noting that Williams "charged TMMK with two distinct acts of discrimination"—failure to accommodate in the fall of 1996 and termination in January 1997). The Sixth Circuit affirmed the grant of summary judgment in favor of TMMK on the termination claim, *see id.* 6a-8a, and Williams did not seek further review of that decision. Respondent's suggestion that "this case seeks to compel Toyota to continue reasonable accommodations," Resp. Br. 1, is therefore wholly misguided.

parties even suggesting the possibility of a remand."). Even granting Williams all reasonable inferences, she has failed to develop a record capable of sustaining a finding that she is substantially limited in performing manual tasks. Indeed, Williams's work history and deposition testimony demonstrate that she is capable of performing a wide range of manual tasks.

Summary judgment is appropriate when the plaintiff "fails to make a showing sufficient to establish the existence of an element essential to [her] case, and on which [she] will bear the burden of proof at trial." *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 322 (1986). Because Williams "bears the burden of proving that she is a 'qualified individual with a disability,' " *Cleveland* v. *Policy Sys. Mgmt. Corp.*, 526 U.S. 795, 806 (1999), she must designate specific facts demonstrating the existence of a genuine issue for trial on this question. *Celotex*, 477 U.S. at 324. If Williams is to survive summary judgment, these facts must be sufficient to allow a reasonable jury to return a verdict in her favor. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

No reasonable jury could conclude that Williams suffers from an impairment that substantially limits the major life activity of performing manual tasks, because no one could reasonably infer that an inability to grip a wooden tool while repetitively wiping down cars with one's arms elevated above the shoulders demonstrates a "substantial limitation" in performing the basic manual tasks that an average person can perform with little or no difficulty. Indeed, courts have been justifiably cautious when asked to treat as disabled individuals who, although capable of performing basic tasks, are restricted from performing such tasks repeatedly. *See, e.g., Thornton* v. *McClatchy Newspapers, Inc.*, 2001 WL 914019, at *5 ("That [plain-

tiff] could perform *certain* manual tasks for only a limited period of time does not present a triable issue that she was 'substantially limited' in a *broad* range of manual tasks.") (emphases added); *Chanda* v. *Engelhard/ICC*, 234 F.3d 1219, 1223 (11th Cir. 2000) ("[Plaintiff's] only restrictions that were severe, of lengthy duration, and with a long term impact were related to a narrow category of tasks, such as typing or cutting foamboard *for an extensive period of time*") (emphasis added); *Cutler* v. *Hamden Bd. of Educ.*, 150 F. Supp. 2d 356, 359-360 (D. Conn. 2001) (rejecting claim that plaintiff suffered substantial limitation on ability to perform manual tasks because of restriction on performing rapid and repetitive motions with right arm); *Shpargel* v. *Stage & Co.*, 914 F. Supp. 1468, 1474 (E.D. Mich. 1996) (granting summary judgment against plaintiff where plaintiff's only difficulty was using his hands to work more than eight hours per day).

The record is devoid of evidence that Williams's impairment crosses the threshold separating difficulties that simply "affect" manual tasks from those that also "substantially limit" them. Williams herself hardly suggests otherwise. She states that she needs "occasional" help getting dressed, that "[g]ardening is limited, housework is limited, and driving an automobile is curtailed." Resp. Br. 9; *see* J.A. 32, 35-36. She also notes that she is under a 20-pound lifting restriction. *Id.*; *see* J.A. 45. Noticeably absent from Williams's statements—and from the record—is *any* indication that Williams is "*substantially* limited" in performing manual tasks in general. Any contention to the contrary is belied by the litany of activities Williams conceded she was capable of performing.[7] Williams was able to perform the manual tasks in her former assembly-line job. J.A. 13. These tasks included using both her hands to rub "back and forth" against an automobile's exterior. *Id.* 22. Furthermore, at one point, Williams's position necessitated opening and shutting car doors, which involved grasping the doors, and shutting hoods and trunks. *Id.* 25-28. When the plant was operating at optimal speed, Williams was opening and closing two doors and closing a trunk or hood every 54 seconds. *Id.* 28. In addition, Williams admitted in deposition testimony that she was able to brush her teeth, wash her face, bathe herself, garden, prepare breakfast, do laundry, and pick up and organize around her home. *Id.* 32-34.

What Williams cannot do—tasks that "require the gripping of tools and arms to be kept overhead or at shoulder level repetitively for an extended period of time," Pet. App. 6a—is certainly insubstantial when compared to the broad range of limitations imposed on the individuals quoted in amicus AFL-CIO's brief. *See* AFL-CIO Br. 14-15. Whatever the relevance of those narratives, there is nothing in the record in *this* case remotely suggesting that Williams has difficulty doing "almost anything you need your hands to do," or can "hardly move" her fingers. *Id.*[8]

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[7] It bears repeating that the Sixth Circuit recognized that Williams could "perform a range of isolated non-repetitive manual tasks performed over a short period of time, such as tending to her personal hygiene or carrying out personal or household chores," notwithstanding her purported limitations. Pet. App. 4a.

[8] As respondent herself acknowledges (Resp. Br. 38), "whether a person has a disability under the ADA is an individualized inquiry." *Sutton*, 527 U.S. at 483. For that reason, the 35 disparate diseases and disorders cited in respondent's brief (pp. 36-38) that were found to have substantially limited particular plaintiffs in Rehabilitation Act cases are irrelevant in determining whether

The broad range of tasks that Williams was able to perform, coupled with the narrow scope of her limitations, demonstrates that judgment for TMMK is appropriate. *See Thornton*, 2001 WL 914019, at *6 ("In this case, [plaintiff] was able to perform a wide range of manual tasks, including grocery shopping, driving, making beds, doing laundry, and dressing herself. Her inability to type and write for extended periods of time is not sufficient to outweigh the large number of manual tasks that she can perform."); *Chanda*, 234 F.3d at 1223 (no genuine issue of material fact regarding substantial limitation on manual tasks when plaintiff was able to perform range of daily activities); *Hilburn* v. *Murata Elecs. N. Am.*, 181 F.3d 1220, 1227-28 (11th Cir. 1999) (no genuine issue of material fact regarding substantial limitation on manual tasks when plaintiff under a 10-pound lifting restriction was otherwise able to bathe, dress, write, cook, and perform housework); *Dutcher* v. *Ingalls Shipbuilding*, 53 F.3d 723, 726 (5th Cir. 1995) (evidence that plaintiff's arm injury restricted heavy lifting and repetitive rotational movements and impaired plaintiff's ability to pick up small objects, hold objects tightly, and turn a car's ignition insufficient to survive motion for summary judgment when plaintiff could perform normal daily activities of living).

It may be that a particular manual task is so central to life that a substantial limitation on that task alone would satisfy the statutory definition of disability. That question is what divided the court in *Thornton*, a case involving an impairment limiting the ability to type and handwrite.

Williams's impairment substantially limits *her* in the major life activity of performing manual tasks. *See Forrisi* v. *Bowen*, 794 F.2d 931, 933 (4th Cir. 1986) ("The definitional task (of determining who is a handicapped person) cannot be accomplished merely through abstract lists and categories of impairments.").

Compare 2000 WL 914019, at *5 ("That Thornton could perform certain manual tasks for only a limited period of time does not present a triable issue that she was 'substantially limited' in a broad range of manual tasks.") *with id.* at *15 (an "impairment in carrying out manual tasks *can* be sufficiently substantial simply because of the importance of those particular manual tasks in modern society") (Berzon, J., dissenting) (emphasis in original). But that question is not presented here. The particular manual task at issue here—"gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time," Pet. App. 4a—is not arguably so central to life that a substantial limitation as to it could plausibly be regarded as a substantial limitation on the major life activity of performing manual tasks generally. Williams and her amici argue that such a limitation may affect the ability to work more broadly, but that simply confirms that her impairment should be analyzed under the major life activity of working, with its particular evidentiary requirements.

The Sixth Circuit's judgment should therefore be reversed, and the District Court's judgment in TMMK's favor on the major life activity of performing manual tasks should be reinstated.

CONCLUSION

For the foregoing reasons, and those in petitioner's opening brief, the judgment below should be reversed.

Respectfully submitted,

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